

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
INACOM CORPORATION, <i>et al.</i> ,)	Lead Case No. 00-02426 (PJW)
)	Jointly Administered
Debtors.)	
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INACOM CORPORATION,)	
)	
Plaintiff,)	C.A. No. 04-148 (GMS)
v.)	
)	
TECH DATA CORPORATION,)	
)	
Defendant.)	
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TECH DATA CORPORATION,)	
)	
Third Party Plaintiff,)	
)	
v.)	
)	
COMPAQ COMPUTER CORPORATION,)		
and CUSTOM EDGE, INC.)		
)	
Third Party Defendants.)	
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ORDER

WHEREAS, on April 13, 2005, Tech Data Corporation (“Tech Data”) filed a motion for leave to file an amended third party complaint (D.I. 35);

WHEREAS, the motion asserts that Compaq Computer Corporation (“Compaq”) and Custom Edge, Inc. (“Custom Edge”) have been consolidated and merged into Hewlett-Packard Company (“HP”), thereby requiring HP to be added to the complaint as a third party defendant;

WHEREAS, the motion further asserts that in the process of discovery Compaq and Custom Edge (and ultimately HP) admitted that they had assumed the obligations of Inacom Corporation (“Inacom”) to Tech Data, as set forth in Tech Data’s Proof of Claim filed in Inacom’s bankruptcy;

WHEREAS, on April 25, 2005, HP filed an opposition (D.I. 33) to Tech Data’s motion, maintaining that the court should deny the motion because (1) the proposed claims lack merit; (2) the proposed claims are barred by the statute of limitations; (3) Tech Data has failed to demonstrate good cause to amend the complaint pursuant to Federal Rule of Civil Procedure 16(b); and (4) Compaq will be prejudiced absent a reopening of discovery;¹

WHEREAS, pursuant to Rule 16(b), “[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule by a magistrate judge;”

WHEREAS, Tech Data filed its motion to amend five months after the deadline to amend the pleadings, and after the close of fact discovery; and

WHEREAS, after having considered the parties’ submissions, Rule 16(b), and the pertinent case law, the court concludes that Tech Data has not shown good cause to amend its third party complaint to add new claims at this late date;

¹ HP does not oppose being added as a third party defendant. Indeed, HP’s opposition brief states that “HP is the legal successor in interest to Compaq and Custom Edge. ITY Corp. d/b/a Custom Edge, Inc. was a wholly-owned subsidiary of Compaq. Effective May 3, 2002, Compaq became a wholly-owned subsidiary of HP and was subsequently merged into HP.” (D.I. 33, at 1 n.1.) Thus, the court will allow Tech Data to add HP as a third party defendant.

IT IS HEREBY ORDERED that:

1. Tech Data's Motion for Leave to File an Amended Third Party Complaint (D.I. 35) is GRANTED in part and DENIED in part.
2. HP, the legal successor in interest to Compaq and Custom Edge, will be added as a third party defendant; the motion is DENIED in all other respects.

Dated: August 1, 2005

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE